

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Easterwood*  
23527

**FILE:** B-207214

**DATE:** November 4, 1982

**MATTER OF:** Fireman Joseph Garrate Dumol, USN  
(Deceased)

- DIGEST:**
1. The gratuity provided in 10 U.S.C. 1475-1480 that is payable upon the death of a service member may be paid to survivors only according to the priority list contained in 10 U.S.C. 1477. Since surviving children are lower in priority on that list than a surviving spouse, the children may not be paid when there is an eligible spouse.
  2. Where neither of two conflicting claimants to a death gratuity payable under 10 U.S.C. 1475-1480 can clearly establish entitlement to payment as the surviving spouse of the deceased service member, the gratuity may not be paid to anyone unless and until more conclusive evidence is submitted in the matter, or a certified copy of a decree of a court of competent jurisdiction establishing entitlement is presented.

The question in this case is which of two women, both claiming to be the surviving spouse of Fireman (EMFN) Joseph Garrate Dumol, USN (Deceased), is in fact his surviving spouse and entitled to the death gratuity provided in 10 U.S.C. 1475-1480. Since neither claimant has definitely established that she is the widow of decedent Dumol, payment of the death gratuity should be withheld until more conclusive evidence is submitted or until a certified copy of a decree of a court of competent jurisdiction is received that judicially establishes which of the two claimants is actually the widow of the decedent.

The Chief of Naval Personnel presented the question through the Navy Accounting and Finance Center, and the matter has been assigned control number DO-N-1396 by the Department of Defense Military Pay and Allowance Committee.

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Fireman Dumol married Eufrocina Borrromeo in the Republic of the Philippines in August 1973, and in 1974 he enlisted in the Navy there. Fireman Dumol served various tours of duty in the United States and became a naturalized citizen of the United States, but he left Eufrocina in the Philippines. A child was born of the marriage, and Fireman Dumol provided support for his wife and child for a while through payments he sent back to his mother, who was also living in the Philippines.

Fireman Dumol married Nenita U, Misagal in Illinois in 1977 without terminating his prior marriage. He had two children with Nenita, and he was living as husband and wife with her at the time of his death in December 1981.

The question of Fireman Dumol's marriage to Eufrocina initially arose when he was transferred to Subic Bay in the Philippines in 1979. Eufrocina learned that he was visiting his family in the Philippines; she made inquiries and found out that he had remarried; then she complained to the Navy that she was Fireman Dumol's wife and had not been receiving support for herself or their child. The Navy initiated an investigation into the circumstances of the 1973 marriage because it predated Fireman Dumol's enlistment in the Navy. Since Navy regulations in effect at the time of the enlistment precluded a married status at the time of enlistment, and since Fireman Dumol was aware of the regulations and stated that he was not married at that time, an Administrative Discharge Board considered the first enlistment fraudulent and recommended that Fireman Dumol be separated from the Navy.

However, the Navy did not discharge Fireman Dumol. Further investigation turned up evidence casting doubt on the validity of the 1973 marriage when documents were produced indicating that Eufrocina had contracted an earlier marriage in 1972 which had not been dissolved before her 1973 marriage to Fireman Dumol. Eufrocina denies that the 1972 marriage occurred, and there is other evidence suggesting the documents are fraudulent.

Both Eufrocina and Nenita claim the death gratuity. Nenita claims that her 1977 marriage to Fireman Dumol was valid because Eufrocina's alleged 1972 marriage rendered the 1973 marriage of Eufrocina to Fireman Dumol invalid. Eufrocina claims that her 1973 marriage was valid because there was no prior marriage. The Chief of Naval Personnel states that there exists "\* \* \* a perceived inability to resolve, factually, the validity of the various marriages \* \* \*," Therefore, he proposes to certify payment of the death gratuity to the decedent's three children in equal shares. In the event this cannot be done, he asks which of the two conflicting claimants is entitled to payment as the surviving spouse.

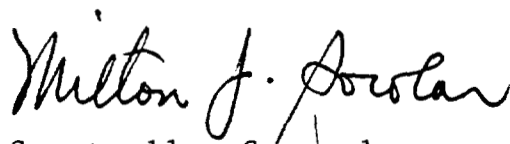
Sections 1475 through 1480 of title 10, United States Code, authorize the payment of a death gratuity to the survivors of a deceased service member in an amount equal to 6 months of his pay or \$3,000, whichever is less. The gratuity is paid to the living survivor highest on the priority list contained in 10 U.S.C. 1477(a), which allows for payment to the deceased's children only if there is no surviving spouse. We have held that under 10 U.S.C. 1477(a) the gratuity may not be paid to surviving children when there is a surviving spouse, even though the spouse cannot be located or for some other reason cannot be immediately paid. See Matter of Fraizer, B-187581, January 6, 1977. In this case there is no doubt of a surviving spouse, so that the Chief of Naval Personnel's proposal to pay the children cannot be adopted. However, the difficulty of selecting between the claimants remains. One of the two, based on the record presented, would qualify under 10 U.S.C. 1477(a).

Generally, in cases involving conflicting claims for the death gratuity, we have held that payment may not be made to anyone unless the evidence presented has provided a sufficient basis for allowing one claim and denying the others, or unless there has been a judicial determination establishing entitlement. 49 Comp. Gen. 167 (1969). In that case, at page 170, we

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agreed with the investigating officer that the evidence "\* \* \* does not clearly establish the right of either claimant to the gratuity payment," Therefore, authorization for payment was denied. We find that the situation is the same in this case.

Accordingly, in the absence of more conclusive evidence or a judicial determination of entitlement, payment in this case should be withheld.

*for*   
Comptroller General  
of the United States